

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 12.6.2201, 12.6.2203, 12.6.2208, ) PROPOSED AMENDMENT AND  
12.6.2210, and 12.6.2215 and the ) ADOPTION  
adoption of NEW RULE I regarding )  
exotic species )

TO: All Concerned Persons

1. On August 25, 2010 at 6:00 p.m. the commission will hold a public hearing at the Fish, Wildlife and Parks Headquarter offices located at 1420 East 6th Avenue, Helena, Montana to consider the amendment and adoption of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than August 13, 2010, to advise us of the nature of the accommodation that you need. Please contact Jessica Fitzpatrick, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; e-mail jfitzpatrick@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

12.6.2201 EXOTIC WILDLIFE: DEFINITIONS The following definitions apply to this subchapter:

(1) remains the same.

(2) "Controlled species" means a live, exotic wildlife species, subspecies, or hybrid of that species, ~~that may not be imported, possessed, sold, purchased or exchanged in Montana unless a person obtains written authorization from the department.~~

(3) and (4) remain the same.

(5) "Permit" means written authorization issued by the department to possess, sell, purchase, breed, or exchange a controlled or prohibited species in the state of Montana.

(6) through (8) remain the same.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-701, 87-5-703, 87-5-705, 87-5-707, 87-5-708, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2203 GENERAL REQUIREMENTS FOR CARE AND HOUSING OF EXOTIC WILDLIFE HELD IN CAPTIVITY (1) Exotic wildlife held in captivity must be treated in a humane manner and cannot be restrained with a chain, rope, or other

holding device except when necessary to provide appropriate care. Facilities for care of captive exotic wildlife must be maintained in a sanitary condition, be large enough to provide room for exercise, be sturdy enough to prevent escape, and provide protection to the public. Food, water, and shelter must be provided in sufficient quantity and quality to maintain the exotic wildlife in a healthy condition.

(2) Specific conditions for the housing of exotic wildlife may be required by the department. Requirements will be consistent with those under 9 CFR, Ch. 1, Part 3 "Standards for Humane Handling, Care, Treatment and Transportation" and consistent with ARM 12.6.1302.

~~(3) All ponds containing controlled exotic fish must be registered with the department. Ponds used to hold controlled exotic fish (including koi and goldfish):~~

- ~~(a) must not be larger than 400 square feet;~~
  - ~~(b) must not be within the 100-year flood plain;~~
  - ~~(c) must be at least 200 yards from any open water;~~
  - ~~(d) must not receive diverted surface water; and~~
  - ~~(e) must not have an effluent or discharge to surface water.~~
- (4) remains the same but renumbered (3).

AUTH: 87-5-702, 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2208 LIST OF CONTROLLED SPECIES (1) The following birds are classified as controlled species:

(a) Barbary Falcon - *Falco peregrinoides*:

(a) through (q) remain the same but are renumbered (b) through (r).

~~(r) (s) exotic waterfowl in the family Anatidae that are not classified as prohibited.~~

~~(2) A person may possess the controlled fish species listed in (2)(a) and (b) without obtaining a controlled species permit. However, individuals possessing these species shall submit a completed reporting form to the department upon acquiring the fish and shall follow restrictions established in ARM 12.6.2203 regarding ponds where fish are held. The following fish are classified as controlled species:~~

(a) coho salmon - *Oncorhynchus kisutch*:

~~(a) (c) Kkoi - *Cyprinus carpio* (for use in outdoor ponds); and~~

~~(b) Ggoldfish - *Carassius auratus* (for use in outdoor ponds).~~

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2210 CONTROLLED SPECIES PERMITS (1) ~~The department may authorize a permit to possess a controlled species in Montana. The department may also authorize a permit to sell, purchase, breed, or exchange a controlled species in Montana. A permit is required for all controlled species except those identified in ARM 12.6.2208(2)(b) and (c).~~

(a) and (b) remain the same.

(2) through (7) remain the same.

AUTH: 87-5-702, 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2215 LIST OF PROHIBITED SPECIES (1) through (3) remain the same.

- (4) The following mammals are classified as prohibited species:
  - (a) Brush-tailed possum - *Trichosurus vulpecula*;
  - (b) Nutria - *Myocastor coypus*;
  - (c) ~~primates in the family~~ Cebidae family (new world primates);
  - (d) ~~primates in the family~~ Cercopithecidae family (old world monkeys);
  - (e) Hyaenidae family (hyenas);
  - ~~(e) (f) primates in the family~~ Hylobatidae family (gibbons);
  - (f) ~~(g) primates in the family~~ Pongidae family (apes);
  - (g) through (j) remain the same but are renumbered (h) through (k).
- (5) and (6) remain the same.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-707, 87-5-708, 87-5-711, 87-5-712, MCA

- 4. The rule as proposed to be adopted provides as follows:

NEW RULE I SPECIFIC REQUIREMENTS FOR CARE AND HOUSING OF EXOTIC WILDLIFE (1) These specific requirements apply in addition to the general requirements found in ARM 12.6.2203 and any other specific condition that may be found on the permit.

(2) Coho salmon, *Onocorhynchus kisutch*, may only be raised for commercial activities.

- (a) Coho salmon must be raised in a facility that:
  - (i) holds a corporate surety bond to the state of Montana for \$500, conditioned to the effect that the permit holder will not violate the conditions of the permit;
  - (ii) is indoors and locked with access restricted solely to individuals involved in the operation and maintenance of the facility;
  - (iii) is not within the 100-year flood;
  - (iv) is at least 200 feet from any surface water;
  - (v) does not receive diverted surface water;
  - (vi) does not have an effluent or discharge of waste or water within 200 feet of surface water including perennial, intermittent, or ephemeral streams or rivers; and
  - (vii) complies with all other local, state, and federal regulations and permits.
- (b) No live fish may leave the facility.
- (c) Fish health screening must be:
  - (i) consistent with the requirements of ARM 12.7.503 and 12.7.504;
  - (ii) done annually; and
  - (iii) reported to the department within 30 days of receipt of results.

(d) Any significant mortality in the facility that occurs as a result of an infectious disease must be reported to the department within 30 days.

(e) Carcasses must either be disposed in a state regulated landfill or in another manner that would not impact state waters or be accessible to wildlife or other animals that might carry carcasses to water.

(3) Goldfish, *Carassius auratus*, and koi, *Cyprinus carpio*, may only be held in outdoor ponds registered with the department using a form provided by the department.

(a) Ponds used to hold goldfish and koi:

(i) must not be larger than 400 square feet;

(ii) must not be within the 100-year flood plain;

(iii) must be at least 200 yards from any open water;

(iv) must not receive diverted surface water; and

(v) must not have an effluent or discharge to surface water.

AUTH: 87-5-702, 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

5. The 2003 Legislature passed SB 442 granting the commission authority to adopt rules regarding the importation, possession, and sale of exotic wildlife through the operation of a "classification review committee" (committee). The intent of SB 442 was to protect Montana's native wildlife and plant species, livestock, horticultural, forestry, agricultural production, and human health and safety from the harmful effects of unregulated exotic animals.

The function of the committee created by SB 442 is to recommend classification of individual exotic animal species to the commission. The committee may recommend that a species be classified as noncontrolled, controlled, or prohibited for importation, possession, and sale. If the commission approves the committee's recommendations, the commission begins administrative rulemaking to incorporate the recommendations into these classification lists: noncontrolled species, controlled species, and prohibited species.

The purpose of this rulemaking is to implement the recommendations of the committee and to increase the clarity of the existing rule through minor editing changes.

The committee recommended the addition of two species of exotic wildlife to the list of controlled species. These additions made revisions to ARM 12.6.2208 and 12.6.2203 necessary. After evaluating these species and finding that potential impacts of private ownership could be minimized by the owners following restrictions on a controlled species permit, these animals were recommended to be classified as controlled. Additional controls are placed on these species by other required state and federal permits.

Revisions to ARM 12.6.2215 add one family of exotic wildlife to the list of prohibited species not allowed for personal possession as pets in Montana. The classification of these exotic wildlife species as prohibited for personal possession as pets was recommended by the committee because the species would not be readily subject to control by humans while in captivity, would pose a substantial threat to native wildlife and plants or agricultural production if released from captivity,

or would pose a risk to human health or safety, livestock, or native wildlife through disease transmission, hybridization, or ecological or environmental damage.

The specific requirements for coho salmon are necessary to reduce their potential impacts and are required to obtain a controlled species permit to possess Coho salmon. The requirements for coho salmon are listed in NEW RULE I along with the requirements for goldfish and koi currently located in ARM 12.6.2203.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to FWP Exotics, Fisheries, P.O. Box 200701, Helena, MT 59620-0701, or e-mail them to fwpexotics@mt.gov. Any comments must be received no later than September 3, 2010.

7. Eileen Ryce or another hearings officer appointed by the department has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife, and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Bob Ream

Bob Ream

Chairman

Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter

Rule Reviewer

Department of Fish, Wildlife and Parks

Certified to the Secretary of State July 19, 2010